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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: FEB 06 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on December 20, 1995. The applicant married a U.S. citizen on April 13, 2001 and is the beneficiary of an approved Petition for Alien Relative (EAC-01-226-58931). The applicant seeks the above waiver of inadmissibility in order to remain in the United States with his U.S. citizen wife.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] arbitrarily denied the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) because the applicant is eligible for adjustment under the Legal Immigration Family Equity (LIFE) Act as an alien who entered the United States illegally. Counsel also asserts that extreme hardship will be imposed on the applicant's wife if the applicant is forced to depart the United States, as the applicant is solely responsible for all of his wife's financial obligations.

In support of these assertions, counsel submits an affidavit of the applicant's spouse, dated February 14, 2002. The record also contains a copy of the Ghana birth certificate for the applicant; a copy of the U.S. birth certificate for the applicant's wife; a copy of the marriage certificate for the couple; copies of the Maryland driver's licenses issued to the applicant and his spouse; a copy of the Employment Authorization Card issued to the applicant; a copy of the photograph page of the Ghana passport issued to the applicant and copies of financial and tax documents for the couple. The entire record was considered in rendering a decision on this application.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record demonstrates that, on December 20, 1995, the applicant entered the United States using a passport and visa belonging to his brother. On June 12, 2002, the applicant admitted to this willful misrepresentation before an officer of CIS.

The AAO notes that denial of the Application to Register Permanent Residence or Adjust Status (Form I-485) does not fall within the jurisdiction of the AAO. *See* 8 CFR § 103.1(f)(3)(iii). Therefore, the AAO will confine its decision to consideration to the Application for Waiver of Grounds of Excludability (Form I-601).

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel offers an affidavit from the applicant's wife in support of the applicant's claim of extreme hardship. The applicant's wife states that prior to her marriage to the applicant, she was "insecure in life physically, emotionally, psychologically and financially." *See* Affidavit of Adowa Ampomah, dated December 13, 2002. The record does not demonstrate the claimed insecurities or the extent of their impact on the life of the applicant's wife beyond the broad assertion quoted above. The applicant's wife further asserts, "That without my husband, I will encounter severe emotional troubles that can ruin my life." *Id.* The AAO notes that a finding of extreme hardship pursuant to section 212(i) of the Act must be based on actual hardship suffered by a qualifying relative as a result of the inadmissibility of the applicant; speculation unsubstantiated by fact cannot form the basis of a finding of extreme hardship. The record does not reveal the "emotional troubles" to which the applicant's spouse refers in her affidavit nor does it establish how these troubles might "ruin her life."

The applicant's wife also states that she is a full-time student and is wholly dependent on her husband for her financial stability. *Id.* The record does not establish that the applicant's wife is unable to work to support herself financially. The record does not address whether or not the applicant's wife could obtain educational loans to meet her expenses while attending Americare Nursing School. Further, the record does not indicate how much longer the applicant's spouse will be a full-time student before completing her studies and commencing employment.

Counsel makes no assertions regarding whether or not extreme hardship would be imposed on the applicant's wife by relocating to Ghana to remain with the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.